84-938

No. _____

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT A. BUSS,

Petitioner,

vs.

WESTERN AIRLINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOAN CELIA LAVINE
Attorney at Law
123 North Hobart Boulevard
Los Angeles, California 90004
(213) 627-3241

Attorney for Petitioner
Robert A. Buss

Vol. III of III

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APPENDIX P

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE TERRY J. HATTER, JR., JUDGE PRESIDING

ROBERT A BUSS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CV 77-124-TJH
	)	
WESTERN AIRLINES,	)	
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California

Date: Monday, September 22, 1980

PATRICIA FERRIER
Official Reporter
410 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 628-8

APPEARANCES:

For the Plaintiff:

JOAN CELIA LAVINE
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Los Angeles, California 90013

MORRIS LAVINE
Attorney at Law
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Los Angeles, California 90013

MARK ROBINSON, SR.
Attorney at Law
888 West Sixth Street
Third Floor
Los Angeles, California 90017

For the Defendant:

Darling, Hall, Rae & Gute
By: PAUL L. GIANNINI
Attorney at Law
523 West Sixth Street
Suite 400
Los Angeles, California 90014

Also Present:

Plaintiff, Robert A. Buss

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LOS ANGELES, CALIFORNIA, MONDAY, SEPTEMBER 22, 1980, 10:20 A.M.

-0-

THE CLERK: Item one, civil action CV 77-124, Buss versus Western Airlines.

Counsel, Please make your appearances.

MR. LAVINE: Morris Lavine and Joan C. Lavine for Robert Buss.

THE COURT: Thank you, Mr. Lavine.

MR. GIANNINI: Good morning, your Honor. Paul Giannini of Darling, Hall, Rae & Gute, for defendant Western Airlines.

THE COURT: Thank you, Mr. Giannini.

MR. ROBINSON: And Mark Robinson, your Honor.

At this time I have a matter to address the Court on.

THE COURT: Surely.

MR. LAVINE: We object to Mr. Robinson's appearance. He was discharged last Monday

in writing.

Mr. Buss is in court to confirm it, your Honor, and he has no standing in this case.

THE COURT: Mr. Lavine, I will hear from Mr. Robinson as an officer of the Court.

Go ahead, Mr. Robinson.

MR. ROBINSON: Your Honor, on Friday last in the afternoon I received a letter purportedly signed by Mr. Buss asking me to cease and desist in all matters concerning this case, and to file a substitution of attorneys.

I have chose to sign that substitution in open court. I am prepared to do so today, but I wish to state for the record certain things that I think are important.

THE COURT: Yes?

MR. ROBINSON: Obviously, I am somewhat

restrained because of the fact that there could be matters falling within the attorney-client privilege and the work product privilege.

But to the extent that I can, I wish to address the Court as follows:

MS. LAVINE: Excuse me. I object to your getting into any detail at all, Mr. Robinson.

I believe that it will interfere with the work product.

THE COURT: Ms. Lavine, would you please -- go ahead, Mr. Robinson.

MS. LAVINE: Excuse me, sir. I am just making an objection.

MR. ROBINSON: The letter that I received on Friday was unconditional, asking me to be removed. And I believe that my client should have that right.

THE COURT: Of course.

MR. ROBINSON: Earlier in the week I received a conditional statement in which I was advised that I was to be substituted out because I had quote agreed to do so due to the fact that I was so busy that I could not handle this case.

Now, that was the condition which I am unwilling to accept for the following reasons: I appeared here not more than a month ago and advised this Court that I would take over as lead counsel.

I did not do so lightly. I did so after being requested and giving due consideration to the time constraints that I had on my calendar.

And I do not want this Court to think that I would toy with this Court's calendar. I did so in good faith. I remain at all times ready, willing and able to perform as lead counsel. I have so stated

over and over again during the past month, to no avail.

Secondly, it is appropriate that I do this in open court because the local rules require that before I can be effectively substituted out this Court must sign that order.

Also, notice has to be given to the opposing party.

In addition, as the Court must realize, I have an interest in compensation, and under the case of Moore versus Telfon, which is cited at 589 F. 2d, 959, a 1978 case, this Court has authority and jurisdiction and discretion upon substitution of attorneys to handle the matter of just compensation for work accomplished.

I do not at this time ask for that, because I think it would be unduly wieldy and, obviously, where matters are on contingency they must await the outcome.

But I do ask, respectfully, that since I do have an interest here and since I have remained ready, willing and able to perform that this Court make an order that I be given special notice of proceedings as they develop in this Court, particularly since under Section 42 U.S.C.(a), 1988, the code provides that this Court can even award attorneys' fees upon the outcome of a case, that I be given special notice so that at an appropriate time I may make whatever motions are appropriate.

THE COURT: I may very well keep you apprized of things.

At this point I am thinking about dismissing this action. I am just sick and tired of the way in which this is proceeding.

MR. ROBINSON: I only say this: that the man standing to my right is my former mentor. He is an outstanding lawyer, and I think that whatever he would have to say

here with respect to how this case should proceed should be listened to.

I do believe that there are other problems that he has no control over, and I think that in the interest of the client that Mr. Morris Lavine should be heard from in terms of how this case should proceed, and I think that if he were lead counsel here this case would proceed with due dispatch.

THE COURT: Thank you, Mr. Robinson. Mr. Lavine?

MR. LAVINE: May it please the Court.

I deeply appreciate the last remarks of Mr. Robinson. Regretfully, Mr. Robinson was so busy that he did not respond to some of my phone calls last week, although he was in the office, and his secretary said he would call me later, but he never did on the occasions required.

Mr. Robinson has stated -- has become a very able lawyer, and I regret the differences required Mr. Buss to issue the requirements of his withdrawal from the case.

Up to this point he has never personally had a conference with Mr. Buss.

However, I appreciate his last remarks and I appreciate the fact that we have submitted a substitution of attorneys for him to sign, and he has agreed to sign it.

And I ask the Court to approve of that substitution at this time.

THE COURT: Yes. I will sign it under the conditions which have been requested by Mr. Robinson, that is, that he be kept apprised of all matters pertaining to this.

MS. LAVINE: Well, I think the expense of that, you Honor, should be borne by Mr. Robinson, as to the cost of stenographic

work, and so forth.

We are glad to notify him at the time that the issue of fees, comes up, to let him know plenty of time in advance, so that he can present any evidence as to his entitlement to any fees as to the outcome of this case.

THE COURT: I am not suggesting you send him all copies of moving papers, but he should --

MR. ROBINSON: I will pay for the cost of those, your Honor. I will pay for the cost of mailing also.

THE COURT: That would be negligible, in any regard. And you are welcome to have most of the moving papers that I have received.

MR. ROBINSON: Thank you very mucn, your Honor.

The only thing else I would like to correct is that I did have a conference

with Mr. Buss. But that is really not important.

Thank you.

THE COURT: Fine.

MR. LAVINE: Well, he had one going out the door at the last court appearance when the substitution was entered.

May it please the Court.

Mr. Robinson has correctly stated that -- perhaps if you and I can get together on the matter of discovery we can move this case to a completion.

As Judge Waters stated in the records that you have before you, Western Airlines has been successful in evading discovery in a meaningful way.

We ask your Honor's assistance to get from the Western Airlines not only the full names and addresses of the potential witnesses that they say may furnish information, but any others that we may have,

together with their home telephone numbers.

And we have no way of finding out just what information they have, unless your Honor does what Judge Sirica did in Washington, in the Watergate case, make them produce the meaningful information that we need to present all of the facts truthfully to your Honor.

They shouldn't have anything to hide. And your Honor is entitled to that information.

In the Nixon case the Supreme Court of the United States says every witness must be available, that the right to the testimony of all witnesses is a right of citizens and courts.

And if your Honor would sign an order entitling us to the home telephone numbers of these witnesses -- we aren't going to corrupt them. We are going to simply find out what they know, if they do,

about the facts of this case, and present them to your Honor in a meaningful way in trial.

Now, we can't do that, we can't enter the Western Airlines facilities.

We do need the assistance of the Court to get this information. And if your Honor will insist that they have to give us the testimony that Nexon was required to produce in the courts of the United States, we can move this case to a quick solution in a meaningful way.

We ask your Honor to, and we will prepare, if your Honor grants my motion, an order entitling us to the names of all witnesses who have yet to be interviewed. And to prevent us -- to telephone them and to have their home telephone number furnished by Western Airlines.

We do not think that is unreasonable. We think it is fair and just to the

administration of justice, and it would seem that Western Airlines would be glad to provide the freedom of information which we are requesting at this time so that we can truly and fairly try this case with all the facts before your Honor.

We also need the right to contact these witnesses, to subpoena them, a right which the constitution gives us, to have witnesses that we can ccnfront and interview in open court.

And we have to have the names and addresses where they can be subpoenaed.

THE COURT: Mr. Lavine, have you taken this matter up with the magistrate?

MR. LAVINE: Have I taken this matter up with what?

THE COURT: With the magistrate.

MR. LAVINE: Yes, your Honor. But the magistrate's power to bring Western Airlines into Court is limited.

We don't understand that the magistrate can issue--or has the clout which the District Court has in Washington.

It was District Judge Sirica that ordered the matters brought into court. You have the same power here, and I think it would enhance your fine reputation, your Honor, to grant this order and to issue orders that Western Airlines, although it has clout, that the Federal Court has more clout to get the evidence that it needs before it.

MR. GIANNINI: May I just address --

THE COURT: I appreciate your feelings on behalf of the Court.

Yes, Mr. Giannini?

MR. GIANNINI: Thank you, your Honor.

MR. LAVINE: I move --

MR. GIANNINI: Pardon me.

MR. LAVINE: -- as I have addressed your Honor for an order, which we will prepare

in accordance with my request to your Honor.

THE COURT: Thank you, Mr. Lavine. Mr. Giannini.

MR. GIANNINI: Thank you, your Honor.

Good morning. This matter of witnesses was covered well over eighteen months ago, if not two years ago, with Judge Waters, and he ruled based upon previous proceedings before Magistrate Kronenberg that the plaintiffs could contact non-officers of Western Airlines.

The were furnihsed with home addresses, home telephone numbers. So this is water long since under the bridge.

I would ask at this time that the Court, since the Court indicated on August 11 in the pre-trial conference that if there were not adequate prosecution in a lawsuit it would be dismissed, that the case be dismissed at this time, your Honor.

I think there has been a total failure in the last thirty days to do anything that I see, other than to have Mr. Robinson's name appear and disappear on the case.

THE COURT: Yes.

MR. GIANNINI: There is one motion that has been set in front of the magistrate for next week where they ask for political contributions to the campaigns of Senator Alan Cranston and various other government officials, including Mayor Bradley.

Other than that pending motion there has been nothing so far as moving the pre-trial conference ahead, and I would renew at this time our motion to dismiss the action for failure to prosecute.

MS. LAVINE: May I be heard?

THE COURT: You may.

MS. LAVINE: Thank you. Now, I seem to be the person at whom the shots are being

taken.

At our last meeting, sir, I was ready to proceed with a pre-trial conference. It was much to my shock that my new co-counsel made a motion for a continuance.

I am ready to proceed at this time.

Your Honor, the order entered by Judge Waters permitted us to proceed with the discovery to the date of trial.

I have had, since August 7, pending before you a pre-trial statement. My opposition has not signed it, but I have.

I am ready to proceed based on that. One can hardly say that a case with nineteen pages, almost, of docket sheets at the pre-trial level is under prosecuted.

Now, I have sought certain specific discovery matters which I hope that the magistrate will -- excuse me, sir. We are not used to having a good mike in the courtroom (microphone adjusted.)

You can tell me to lower my voice if that bothers you, sir.

THE COURT: I will take care of it. Thank you.

MS. LAVINE: I am afraid you will.

I have asked for payroll records that are computerized. I have been given personnel files in the week before the last pre-trial conference hearing, on August 11, 1980, and a summary of what were suppowed to be, I assume, gross salaries.

There was no fring benefit listing for either of the two successors of Mr. Buss.

I have asked for that information. I have asked for some information which I believe is necessary for Mr. Buss to have, frankly, to evaluate, whether he wants to make certain motions in this Court.

And Mr. Giannini is correct that I have asked for that.

I have asked for the scheduling of the deposition of a man who Western Airlines now claims is the replacement of an expert of theirs called Bruce Wallace.

I must point out to you, sir, that I cannot simply schedule this discovery. I have to make a motion before the magistrate to have it calendared and scheduled.

That means I must give at least a seventeen-day notice.

I stood on my head to have contact with Mr. Robinson. I could not get his attention. So I finally went and ahead and filed the motion that I have filed.

He, outside of this courtroom the last time we were in Court, on August 11, discussed with Mr. Giannini the specter of quote volunteering discovery unquote.

That is an impossibility, it is unrealistic for any attorney familiar with this case to believe that such a thing

could happen.

But I thought maybe Mr. Robinson had some magic, because of his prestige, that might persuade Western Airlines to be cooperative so that we would not have to go through these motions and time-consuming expense, wasting efforts that we have to go through to get any bit of discovery at all. Nothing voluntary appeared whatsoever.

Now, I would like to address, your Honor, about contact in subpoenaing of witnesses.

When I sought to obtain an order from Judge Waters on that matter, sir, you reversed his order. We now stand in a position where we may not contact or subpoena witnesses, based on the order that you have issued.

Perhaps it was inadvertent on your part, but when you denied my applications you denied my application and you said you

were reversing Judge Waters, when I asked you.

That was why I was so persistent at that time in trying to find out exactly what you meant.

Surely you do not think we can try a case without subpoenaing witnesses. We have to have at least such contact with them to do that. That is the circumstance.

Mr. Robinson, after repeated phone calls, after my physically being in his office twice, right after this -- once on the same day that we were last here, and then two days later, I still wasn't able to get his attention.

Unfortunately, he is a very busy man. I realize you have a courtroom full of people. Mr. Robinson has raised the specter of this acrimonious problem

May I ask whether my opposition agrees with the statement of facts in the

pre-trial conference statement, and whether his only disturbing portion is that I have asked for reservations of rights?

THE COURT: You may inquire.

MS. LAVINE: Thank you.

Do you agree with the statement of facts which are prepared and in the proposed pre-trial statement that was delivered to you. I believe, on August 7, 1980?

THE COURT: Ms. Lavine, I believe he understands the question.

MR. GIANNINI: Your Honor, I think we went through all this at the last pre-trial conference hearing, that I had numerous objections to new matter that Ms. Lavine inserted in her proposed pre-trial conference order without previously consulting or notifying me.

THE COURT: There has been no change?

MR. GIANNINI: There has been no contact between plaintiffs' counsel and myself .

since the last hearing.

THE COURT: All right. I do have a full court, and in an effort to enhance this Court's reputation with regard to keeping its order this matter is dismissed without prejudice.

Thank you.

Let's call the next matter.

MS. LAVINE: Very well, sir. Will you --

THE COURT: Call the next matter.

MS. LAVINE: -- then permit me to prepare or have my opposition --

THE COURT: Ms. Lavine, the matter is dismissed.

MR. LAVINE: We object to it on the grounds of denial of due process of law guaranteed by the Fifth and Fourteenth Amendments --

THE COURT: The objection is noted.

MR. LAVINE: -- of the Constitution.

MS. LAVINE: And the Sixth and Seventh Amendments to the United States Constitution.

THE COURT: Thank you.

Call the next matter.

MR. LAVINE: Your Honor --

MS. LAVINE: And we cite you for misconduct, sir.

THE COURT: You are going to be held in contempt if you keep this up, Ms. Lavine.

Go ahead.

***

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE TERRY J. HATTER, JR., JUDGE PRESIDING

ROBERT A. BUSS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV 77-124-TJH
	)	
WESTERN AIRLINES,	)	
	)	
Defendant.	)	
	)	

C E R T I F I C A T E

I, PATRICIA FERRIER, do hereby certify that I reported the proceedings in the above-entitled cause on September 22, 1980. I further certify that the foregoing is a true, actual and correct transcript of said proceedings.

Los Angeles, California, dated this (15th) day of (October), 1980.

/s/
PATRICIA FERRIER
Official Reporter

APPENDIX Q

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

No. CV-124-TJH Date 9/22/80

Buss vs Western Airlines

DOCKET ENTRY

PRESENT:

HON. TERRY J. HATTER, JR. JUDGE

Florence Kato	Patricia Ferrier
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
Joan Celia Lavine Morris Lavine Mark Robinson	Paul L. Giannini

PROCEEDINGS: STATUS CONFERENCE

Mark Robinson reports to Court that he has been discharged by pltf as lead counsel on Friday and requests that he continues to receive notice of proceedings. Co-counsel for pltf speak to Court re discharge and

notice. Court instructs counsel to mail copies of all pleadings to Mr. Robinson at his expense.

Pltf orally moves for discovery re names, addresses and telephone numbers of witnesses. Arguments heard.

Deft orally moves for dismissal of action for lack of prosecution. Motion granted.

APPENDIX R

PAUL L. GIANNINI
Darling, Hall, Rae & Gute
400 Pacific Mutual Building
523 West Sixth Street
Los Angeles, California 90014
627-5105
Attorneys for Defendant
WESTERN AIR LINES, INC.

LODGED
OCT 3 1980
CLERK, U.S.
DISTRICT COURT
CENTRAL
DISTRICT OF
CALIFORNIA

FILED
OCT 2 1980
CLERK, U.S. DISTRICT
COURT, CENTRAL DISTRICT
OF CALIFORNIA

ENTERED
OCT 3 1980
CLERK, U.S. DISTRICT
COURT, CENTRAL
DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff,	NO. CV-77-0214-TJH (Kx)
v.	ORDER OF DISMISSAL
WESTERN AIR LINES, INC., Defendant.	

On August 11, 1980 the parties appeared for a scheduled Pre-trial Conference. At the hearing it became evident that no Pre-trial Conference Order had been submitted

by the parties pursuant to the Court's previous orders and Local Rule 9(g). Plaintiff had failed to submit a proposed order in a timely fashion, and the order actually submitted was not in proper form, nor was it acceptable to the defendant. Due to the fact plaintiff had retained new counsel, the Court ordered that a status conference be scheduled for September 22, 1980. The Court further ordered that if plaintiff did not diligently prosecute the action, and failed to have the action ready for a prompt Pre-trial Conference to be calendared at this status conference, that the Court would dismiss the action on its own motion.

On September 22, 1980, plaintiff appeared through his previous counsel, and filed a new substitution of attorneys which relieved the attorney retained the previous month from representing plaintiff.

It appears to this Court that plaintiff has failed to comply with the orders of this Court previously made; plaintiff has failed to diligently prosecute this action and has not contacted opposing counsel regarding the preparation of a proper Pre-trial Conference order since the previous hearing on August 11, 1980.

NOW, THEREFORE, IT IS ORDERED that the above matter is dismissed without prejudice pursuant to Rule 41(b), Federal Rules of Civil Procedure.

DATED: (October 2, 1980)

/s/ (Terry J. Hatter,Jr.
United States District Judge

APPROVED AS TO FORM:

_____
Attorney for Plaintiff

ACKNOWLEDGMENT OF RECEIPT:
Received copy of above document on _____, 1980.

_____
Attorney for Plaintiff

VERIFICATION

. . . .

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action or proceeding. My business address is 523 West Sixth Street, Suite 400, Los Angeles, California 90014.

On (September 29, 19(80), I served the foregoing document described as (ORDER OF DISMISSAL on the plaintiff in this action or proceeding by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

Joan Celia Lavine, Esq.
304 South Broadway, Suite 408
Los Angeles, California 90013

Executed on (September 29, 19 (80)

at Los Angeles, California.

(State) I declare under penalty of perjury that the above is true and correct.

x (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(Signature)

APPENDIX S

JOAN CELIA LAVINE
304 South Braodway, Suite 408
Los Angeles, California 90013
Telephone: (213)627-3241
Attorney for Plaintiff Robert A. Buss

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff, vs. WESTERN AIRLINES, INC., Defendant.	)CASE NO.)CV-77-124-TJH(Kx))NOTICE OF MOTION)AND MOTION TO RE-)CONSIDER ORDER)DISMISSING ACTION)WITHOUT PREJUDICE)AND TO ALTER AND)AMEND SAID ORDER)PURSUANT TO F.R. CIV.P., RULES 59(e) AND 60, AND DUE PROCESS CLAUSE OF FIFTH AMENDMENT, U.S. CONSTITUTION; MEMORANDUM OF POINTS AND AUTHORI- TIES; EXHIBITS (10/20/80; 10:00 a.m.; Judge Hatter)

TO THE DEFENDANT WESTERN AIRLINES, INC. AND TO ATTORNEYS DARLING, HALL, RAE AND GUTE AND PAUL L. GIANNINI:

NOTICE IS HEREBY GIVEN that on October 20, 1980 at the hour of 10:00 a.m., or as

soon thereafter as said matter can be heard, before the U.S. District Judge assigned herein, the Honorable Terry J. Hatter, or such Judge as may be assigned herein, the plaintiff Robert A. Buss will move for reconsideration, alteration and amendment of the order of dismissal, orally announced herein on September 22, 1980, said motion to be pursuant to Federal Rules of Civil Procedure, 59(e), 60, and 1 and the right to due process of law as guaranteed by the Fifth Amendment and Article III, U.S. Constitution, the right to a jury trial and determination of his cause on the merits, and his right not to be coerced into waiving the assertion of his rights to discovery, to damages herein, whether they are punitive, liquidated or for wilful misconduct of the defendant in order to obtain a trial on the merits by a jury and a verdict and judgment fully compensatory and according

to law or to seek appellate review pursuant to Title 28 U.S.C., Section 1291.

Said motion will be also based on the failure of the defendant to give or of the court to provide for notice, whether oral or written, of any purported motion for dismissal or any notice of any grounds so that the plaintiff might have the reasonable opportunity to be heard, presenting evidence on his behalf, all in violation of his right to due process of law as guaranteed by the Fifth Amendment, U.S. Constitution.

Plaintiff will seek to have this Court vacate its order of dismissal on the stated ground "to preserve the decorum of the court", on the grounds that the law neither provides fornor do the facts of this case provide any support for such a dismissal order, said order is clearly erroneous and contrary to law and is plain error on its

face.

Said motion will be based on the further grounds and for the further reasons stated in the motion for reconsideration attached hereto and incorporated herein by reference as though fully set forth, the memorandum of points and authorities attached hereto as well as Exhibits "A" through "M".

Said motion will be based on the files and records herein as well.

Dated: October 1, 1980

By: Joan Celia Lavine
JOAN CELIA LAVINE AND MORRIS LAVINE, Attorneys for Plaintiff Robert A. Buss

MOTION TO RECONSIDER ORDER DISMISSING ACTION WITHOUT PREJUDICE AND TO ALTER AND AMEND SAID ORDER PURSUANT TO F.R. CIV.P., RULES 59(e) AND 60, AND DUE PROCESS CLAUSE OF FIFTH AMENDMENT, U.S. CONSTITUTION

Comes now the plaintiff herein Robert A. Buss and moves this Honorable Court for a reconsideration, alteration and amendment of its order stated orally in court on September 22, 1980 dismissing said action without prejudice "to preserve the decorum of the Court." Plaintiff also moves this Court for an order vacating and striking said order, and for an entry of default against the defendant Western Airlines, Inc. In regard thereto, the plaintiff sets forth the following grounds and reasons, to-wit:

1. The policy of these federal courts provides for a trial and determination on

the merits in accordance with the rights of litigants to settle their grievances in civil matters according to law and in an orderly, consistent process. (Due Process of law as guaranteed by the Fifth Amendment, U.S. Constitution) This is a constitutional and statutory requirement.

Plaintiff has vigorously sought discovery in this case, and has been required to apply to the appellate courts for relief where local orders and two specific orders in this case barred him from seeking reconsideration before a district judge of a U.S. Magistrate's rulings as provided for by Title 28 U.S.C., Section 636, and from adverse rulings which were sufficient limitations on discovery so as to compel the plaintiff to seek pretrial reversals by way of extraordinary writ in three separate writ applications.

This case, in its pretrial stages, now takes up at least nineteen docket sheet pages in the U.S. District Court. It can hardly be said that plaintiff has been anything less than very vigorous in asserting his constitutional rights and particularly his rights to discovery herein as provided for in Federal Rules of Civil Procedure, Rules 26 through 37 and Hickman v. Taylor, 329 US 451, 91 L.Ed. 495.

Plaintiff has been met with truly massive and incredible sabotage, torpedoing and desperate guerrilla warfare by defendant which only the likes of the Ayatollah Khomeini has engaged in. The predecessor Judge assigned to this case, the Honorable Laughlin E. Waters, described the misconduct of the defendant in a hearing on March 23, 1979:

> "I think there has been a deliberate lack of cooperation and an attempt to frustrate this discover procedure

in this case by the defendant."

(Reporter's Transcript of Proceedings, March 23, 1979, page 20, line 21 to page 21, line 1)

The above remarks were made by Judge Waters after much more experience with the defendant herein than Judge Hatter had after him.

Given the above misconduct of the defendant, Judge Waters made the following statement and order:

"I don't think any arbitrary time periods should frustrate appropriate discovery."

(Reporter's Transcript of Proceedings, March 23, 1979, page 43)

In an order filed December 20, 1979, Judge Waters vacated all discovery cut-off and ordered that the discovery issues be litigated on an issue-by-issue basis, apparently each issue to be presented to the

district judge before the next was to be dealt with. I was shortly after that in February, 1980 that plaintiff received notice that this case had been transferred to another Judge, Judge Terry J. Hatter.

With the continuous lack of cooperation of the defendant herein, it was unlikely that it would become congenial in the preparation of a pretrial statement or proposed order. True to form, the defendant through its counsel stormed out of one pretrial meeting on June 18, 1980 at the law offices of Joan Lavine, plaintiff's counsel, refusing to convey Western's contentions, witness list or witness locations or accept that plaintiff would not stipulate to certain facts or conclusions such as a waiver of the issue of wilfulness. This was not the first time that Mr. Giannini, defense counsel for Western Airlines had abruptly left in the middle of a meeting and refused

to complete it; this simply typified the pattern of misconduct of the defendant through its counsel in and effort to sabotage any discovery or trial on the merits herein.

On August 4, 1980, the defendant made a motion for a continuance of the pretrial conference hearing, which Judge Hatter denied, ordering defense counsel to arrange his schedule so as to complete his responsibilities herein. Naturally, defense counsel Mr. Giannini ignored this order of the court, and gave priority to other matters, repeatedly cancelling his appointments with plaintiff's counsel throughout the week of August 4, 1980, failing to meet with Ms. Lavine to go over the pretrial statement on August 7, 1980 when she called his offices and waited for him for several hours, only to be met by a messenger who picked up the draft, not him. (See Exhibits

"A" through "K" attached hereto.)

Plaintiff's counsel Joan Lavine and defense counsel had three meetings on August 4, August 5, and August 6, 1980 and a telephone conversation on August 7, 1980 concerning the pretrial conference statement drafts. The plaintiff's statement of stipulated facts was delivered in draft form to the law offices of the defense counsel by hand on August 4, 1980, and it was discussed at the August 5, 1980 and August 6, 1980 meetings and during a phone conversation on August 7, 1980. I can hardly be said that the plaintiff through his counsel did not contact the defendant through its counsel concerning preparation of the or alteration of the proposed draft; and statements which imply that the plaintiff did not do everything possible to draft a joint statement are false.

The defendant through its counsel served a declaration on plaintiff's counsel on August 11, 1980 admitting that it had not properly attended to the preparation of a pretrial statement. A true and correct copy of the Affidavit of Paul L. Giannini, dated August 8, 1980, is attached hereto and marked Exhibit "K". Plaintiff's copy did not contain the exhibit of a pretrial statement referred to in the body of the affidavit. That affidavit reflects that the defendant's only objection was to plaintiff's reservation of rights as plaintiff reads Mr. Giannini's affidavit.

Plaintiff chose not to waive his objections to the pretrial discover proceedings and notified the court of this position.

If the defendant though its counsel had a change of position, it was obligated to communicate it to plaintiff through its counsel. This defendant did not do until

in court on September 22

2. The defendant failed to properly and formally notice a motion for an order dismissing this action under the 17-day rule for a noticed motion in writing, failed to notify the plaintiff in any way that a dismissal would be moved for on September 22, 1980 and failed entirely to support its claims with any admissible evidence or statements under oath. The defendant failed to articulate any legal grounds in its motion. And the Court stated that it was dismissing the matter without prejudice to the preserve the decorum of the court, which is not a legal ground.

The Court was without jurisdiction to enter such an order in violation of due process of law, and its application of F.R. Civ.P., Rule 41(b) was and is inherently and as construed and applied a denial of due process of law as guaranteed by the

Fifth Amendment, U.S. Constitution, as are F.R.Civ.P., Rule 16 and Local Rules of the U.S. District Court for the Central District of California, Rule 9 in the above entitled matter.

No rule was cited orally by either the defendant or the Court at the time that the oral application was made. Plaintiff objects that the insertion of any rule is beyond the scope of the oral application so that this Court issues an order not based on any application pending before it in compliance with the concept of notice and the opportunity to be heard before a determination is made. (Hovey v. Elliott, 167 US 409, 42 L.ed. 215)

3. Plaintiff respectfully submits that an order of dismissal herein prior to trial, and not being a trial on the merits, is special, partial, arbitrary and capricious, and fails to provide the plaintiff with a

trial on the merits, to his day in court, or to access to the courts as guaranteed by the due process clause of the Fifth Amendment, U.S. Constitution.

4. Plaintiff respectfully submits that the judge has effectively determined the above entitled cause against the plaintiff without the first witness being called and not on the merits and in doing so has removed from the plaintiff the right to a trial by jury as guaranteed him by the Fifth, Sixth and Seventh Amendments, U.S. Constitution. (Title 29 U.S.C., Section 626(c);

5. Opposition counsel made series of false and misleading statements in moving for the entry of a dismissal order during the September 22, 1980 proceedings on a status conference hearing.

First, Mr. Giannini, the defense counsel claimed falsely that full locations and

means of locating witnesses had been supplied to the plaintiff. (Apparently, his remarks included the claim of delivery to plaintiff of home phone numbers which are current.) The Court is invited to examine Exhibit "M", attached hereto and which is the witness list supplied to plaintiff as part of a pretrial memorandum of contentions of law and fact. The Court will observe that only Western Airlines addresses are listed. The Court will also observe telephone numbers all have the same beginning numbers, which plaintiff believes are Western Airlines telephone lines.

The defense counsel have advised plaintiff through his counsel that Western Airoines has a long-term policy of refusing to permit the service of subpoenas or access to employees during work time at Western Airlines facilities. Western Airlines has thus built up a wall around its facilities

and employees while they are at Western Airline facilities so that to supply work addresses and/or phone numbers does not supply plaintiff with locations where potential witnesses can be contacted to be served with subpoenas so that they can be brought into court.

Second, Mr. Giannini falsely represented to the Court in effect that no contact had been attempted or effectuated by plaintiff in regard to the two pretrial conference statement drafts served on the defendant and lodged with this Court on August 5, 1980 and August 7, 1980, and concerning which a draft of a statement of stipulated facts had been served on the defendant on August 4, 1980. (See Exhibits "A" through "L" attached hereto.)

Mr. Giannini refused to draft any of the first three sections, and so indicated to plaintiff and his counsel during an

August 4, 1980 meeting after court. After plaintiff counsel did the work on the first three sections, they were delivered by hand to Mr. Giannini's office on August 4, 1980. Thereafter, after various attempts of plaintiff's counsel and a substantial amount of waiting and setting aside of time to be available, plaintiff's counsel finally managed to meet with Mr. Giannini at the end of the day on August 5, 1980, again on August 6, 1980, but Mr. Giannini failed to appear at Ms. Lavine's office on August 7, 1980 when she had finished a final proposed draft of a pretrial statement and waited for him for several hours, until he finally called and said that he would not agree to a reservation of rights by plaintiff--a messager had appeared to retrieve a copy of the final draft rather than Mr. Giannini coming over to Ms. Lavine's office to go over it with her.

On August 11, 1980 the defense counsel served on Ms. Lavine what appeared to be his full statement of objections to her pretrial statement in the form of an affidavit. The only objection was to a reservation of rights, as far as can be determined from opposition counsel's statement. (See Exhibit "K", attached hereto being the August 8, 1980 copy of an affidavit served on Ms. Lavine on August 11, 1980 in court.)

Mark Robinson, an attorney who had appeared on behalf of the plaintiff once on August 11, 1980 in court, and who lacked apparently any knowledge or understanding that only formal discovery proceedings would induce defendant to provide discovery, entered into some kind of a plan for voluntary discovery with Mr. Giannini after court on August 11, 1980. Plaintiff's counsel Ms. Lavine received a copy of a confirming letter which she assumes was mailed to

defense counsel by Mr. Robinson's office. (A copy of that letter is attached hereto and marked Exhibit "L")

When it became apparent that completed witness lists, including full and complete names, work and home addresses and work and home phone numbers of thos identified in discovery or by defendant as potential witnesses, or any other form of discovery was/not being produced "voluntarily" under Mr. Robinson's concept of doing discovery herein, plaintiff's other counsel Joan Lavine and Morris Lavine filed a formal discovery motion on September 12, 1980 which was taken off calendar due to the oral order of this court dismissing this action.

Among the matters which plaintiff sought was information about the campaign contributions records and assistance given by Western Airlines and persons associated with it to Alan Cranston and Tom Bradley.

Plaintiff is informed and believes and on that basis sets forth that the sone of U.S. Senator Alan Cranston is the law clerk of U.S. District Judge Terry J. Hatter. Plaintiff is also informed and believes that Judge Hatter was previously on the mayoral staff of the mayor of the City of Los Angeles, Tom Bradley and was active politically on his behalf.

Defense counsel made a remark about the above discovery being sought in the course of the September 22, 1980 proceedings. If indeed this was at least one of the grounds for dismissal of this action, although not so articulated by the Court, it is respectfully submitted that plaintiff is entitled to seek discovery which would indicate whether there are facts in that area requiring the Judge assigned to the case to recuse himself. (Title 28 U.S.C., Sections 144 and 455; Tumney v. Ohio, 71

L.ed. 749, 273 US 510)

5. Plaintiff respectfully submits that an order of dismissal in this case effectively punishes the plaintiff for his assertion of his constitutional, civil and statutory rights to seek discover herein, to preserve his right to appeal and to do discovery and exacts from him the price of not being able to bring his cause to trial by a jury for his refusal to waive those rights in a pretrial statement.

6. Said motion is based on the files and records herein, this motion and the notice of motion attached hereto, the exhibits attached hereto and incorporated herein by reference as though fully set forth, the motion for recusal of Judge Terry J. Hatter, filed concurrently herewith and his rights to due process of law and the equal application and equal protection of the laws as guaranteed by the Fifth,

Sixth and Seventh Amendments, U.S. Constitution.

Dated: October 1, 1980

Respectfully submitted,

By: Joan Celia Lavine
JOAN CELIA LAVINE AND MORRIS LAVINE,
Attorney for Plaintiff Robert A. Buss

MEMORANDUM OF POINTS AND AUTHORITIES

It is the policy of these courts to try cases on their merits, rather than on mere technical rulings or determinations and not the facts of the substantive allegations of the plaintiff. (Blunt v. U.S., 244 F.2d 355; Christoffel v. U.S., 190 F.2d 585; Hovey v. Elliott, 167 US 409, 42 L.ed. 215)

Plaintiff was entitled to receive service in writing of a 17-day notice of motion, setting forth specifically the grounds so that he might have the opportunity to be able to present his defense, to do discovery if he chose and to seek full fair

consideration of his position, knowing that of the defendant. (Morgan v. U.S., 304 US 1, 82 L.ed. 1129; F.R.Civ.P., Rule 5)

Plaintiff is entitled to assert and present, without waiver, his position. (Garrity v. New Jersey, 17 L.ed.2d 562, 385 US 493) Plaintiff respectfully submits that the court's order of dismissal is clearly erroneous and plain error to condition his right to a trial on submitting to defendant's demand what he waive asserted rights herein in order preserve his right to appeal.

The local rules as contained in Rule 9 require the defendant to supply full information as to the location of witnesses named in the witness list, but it is the defendant which has failed to supply the home locations of those named witnesses.

It is respectfully submitted that the proper procedure for this Courtto pursue is to provide for separate pretrial

statements with pretrial orders reflecting the unilaterally stated views of each side. (Burton v. Weyerhaeuser Timber Co., 1 FRD 571, Org., 1941)

It is the defendant who has failed to supply a witness list in compliance with Rule 9 at the time required and/or containing informatiion of home locations. This is grounds for the entry of a default against it. (Wirtz v. Hooper-Holmes Bureau, Inc., 327 F.2d 939 (5th Cir., 1964)

Federal Rules of Civil Procedure, Rules 59(e) and 60 give this Court the power to reconsider final orders and judgments in the interests of substantial justice.

Plaintiff seeks an order relieving the parties herein of being required to serve all of the papers and pleadings herein on mark Robinson, who appeared in this matter only once and who has no interest or standing which would necessitate this unnecessary

burden on the parties herein.

This motion is directed to the formally entered order of dismissal herein, entered pursuant to oral indications on September 22, 1980 as well as the oral indications.

Plaintiff is entitled to a public trial on all of the issues and matters herein and to be able to file and preserve a full, public record of this case so that he may seek review by the appellate courts herein. The Court, entered an order prohibiting the plaintiff and his counsel from recording out of court meetings and proceedings herein, and precluded him from filing with this Court the record in a full, complete manner of what has occurred in meetings and pre-trial required contacts between counsel on which this Court apparently bases and uses to dismiss this action. Plaintiff objects that this denies him access to the courts with all of the evidence which he is entitled

to present to the court. It is respectfully submitted that this constitutes an impermissible interference with the right of the plaintiff to make a record for the purposes of appeal. (F.R.Civ.P., Rules 6(a) and 10(a); International Business Machines Corp. v. Edelstein, 526 F.2d 37) The plaintiff cannot file a transcript prepared pursuant to Title 28 U.S.C., Section 753 or a tape as evidence that can be reviewed on appeal.

It is the defendant who has engaged in a pattern and practice of refusing to provide discovery who has caused the delay, not the plaintiff.

It is respectfully submitted that the plaintiff is entitled to a trial on the merits in accordance with constitutional, and statutory requirements providing for same by a jury.

WHEREFORE, the plaintiff Robert A. Buss seeks reconsideration, alteration, and

amendment and reversal of the above order of dismissal, the entry of a default against the defendant Western Airlines or in the laternative the setting of this matter for trial by a jury on the plaintiff's pleadings and pretrial statements lodged herein on August 5, 1980 and August 7, 1980.

Dated: October 1, 1980

Respectfully submitted,

By: Joan Celia Lavine
JOAN CELIA LAVINE AND MORRIS LAVINE
Attorneys for Plaintiff Robert A. Buss

PROOF OF SERVICE

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above entitled cause. On (October 1, 1980) I served a true copy of (Notice of Motion and Motion To Reconsider Order Dismissing Action, etc)

by personally delivering it to the person(s) indicated below in the manner as provided in F.R.Civ.P., Rule 5(b):

(Darling, Hall, Rae and Gute
523 West Sixth Street, #400
Los Angeles, California 90014)

Mark Robinson Sr.
888 West Sixth Street, 3rd floor
Los Angeles, CA 90017)

BEST AVAILABLE COPY

Executed on (October 1, 1980 at Los Angeles, California.

I hereby certify that I am employed in the offices of a member of the Bar of this Court at whose direction the service was made. I certify under penalty of perjury that the foregoing statements are true and correct.

_____

Signature

304 South Broadway, Suite 408
Los Angeles, California 90013
July 31, 1980

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, U.S.D.C. (C.D.Cal.) CV-77-124-TJH

Dear Mr. Giannini:

I do not know whether we will be required to have a proposed pretrial order ready to present to the Court next week since there has been no determination on my motion for a short continuance.

I would suggest that you write out anything to which you are willing to stipulate and transmit it to me.

You may use my statement of issues of law and fact as a base although I may insert others or may wish to rewrite what I have previously written; I refer to the July 28 memo.

I wish you to understand that your serious delay and tardiness in supplying me with information as the basis for the memorandum of law and facts and preparation of any proposed order for my clients is entirely unacceptable to me. I do not see how I can meet the court deadline as a result.

If there are any facts that you do not dispute, but do not wish to stipulate to, please write those out.

Very truly yours,

JOAN C. LAVINE

EXHIBIT "A"

(hand-delivered August 1, 1980)

Joan Celia (Dollie) Lavine
Attorney at Law
617 South Olive Street, Suite 510
Los Angeles, California 90014
U.S.A.
Telephone (213) 627-3241

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, Inc., U.S.D.C. (C.D.Cal.) Case No. CV-77-124-TJH

Dear Mr. Giannini:

This is to confirm that you and I met after court this morning to discuss the preparation of the pretrial conference proposed order and statement. I reminded you that Judge Hatter's order requires that it be filed the Tuesday before the pretrial conference hearing, rather than Wednesday before.

You told me that you have had a hearing and depositions scheduled for this afternoon and tomorrow.

In response to my correspondence of last week to you about the preparation of the order, you stated that you did not wish to draft a proposed stipulation or statement of facts to which your client has no objection. You told me to do so.

I am enclosing Section I, II, and III as portions of the pretrial conference proposed order draft for you to go over. In addition the contentions of law and fact which are part of the memo may be added as drafts for sections VI and VIII and the Exhibits may be inserted at least in part in VII; I may add to these.

This is to confirm that you phoned my offices at about 4:00 this afternoon and stated that you could not meet with me until tomorrow at 3:00 p.m. You left this message with my clerk. You will barely have time to read over my draft of the work before it must be taken to the courthouse

to be lodged.

Very truly yours,

/s/

JOAN CELIA LAVINE

Enclosure: proposed drafts of sections I, II, and III or pretrial

EXHIBIT "B"

I. TYPE OF ACTION AND THE PARTIES TO THE ACTION

This action is a lawsuit brought by the plaintiff Robert A. Buss against the defendant Western Airlines, Inc., for age discrimination in Employment Act of 1967, Title 29 United States Codes, Section 621, et seq., and particularly Sections 621, 623, and 626 and Section 15 of the Fair Labor Standards Act of 1938, as amended Title 29 united States Codes, Section 201, et seq., and the Fifth and Courteenth Amendments, U.S. Constitution.

Although a merger of Western Airlines, Inc., has been negotiated, it was rejected by the CAB and has not taken place.

The pleadings which raise the issues in this case are all of the papers and pleadings on file herein. Theis includes the first amended complaint, the answer

thereto and this proposed pretrial conference statement and order as well as all the other files and records herein.

II. FEDERAL JURISDICTION AND VENUE

Federal jurisdiction is invoked by the plaintiff based on Title 29, United States Codes, Section 621, et seq., and particularly Sections 621, 623, and 626, and Section 15 of the Fair Labor Standards Act of 1938, as amended Title 29 United States Codes, Section 201, et seq., and the Fifth and Fourteenth Amendments.

Plaintiff timely filed his notices of intent to sue the defendant Western Airlines at both the state and federal levels, on or about December 30, 1975 and November 17, 1975 respectively.

The United States District Court has jurisdiction to hear the claims of the plaintiff as provided for in the above

stated laws of the United States.

Since the principal place of business of the defendant Western Airlines, Inc. is at Los Angeles, California within the Central District of California, the United States District Court for the Central District of California is the proper location for suit to be brought against it. There is no dispute that venue lies in this district.

III. ADMISSION OF FACTS

It is hereby stipulated by and between the plaintiff Robert A. Buss, through his counsel Joan Celia Lavine, and the defendant Western Airlines, Inc., as follows:

1. The plaintiff Robert A. Buss is 67 (sixty-seven) years of age, having been born on January 23, 1913. On October 17, 1975, when he was involuntarily terminated from his employment with Western Airlines,

Inc., he was between 62 and 63 years of age. On October 17, 1975 and to the present Mr. Buss, the plaintiff, has at all times been within the protected class as provided for in title 29 U.S.C., Sections 621, et seq., and particularly 621, 623 and 626 of Title 29 united States Codes.

2. The defendant Western Airlines is an "employer" within the provisions of Title 29 U.S.C., Sections 621, et seq., and Section 15 of the Fair Labor Standards Act of 1938, as amended Title 29 United States Codes, Sections 201, et seq., and the Fifth and Fourteenth Amendments, U.S. Constitution, and therefore subject to said provisions and the enforcement of same.

3. The plaintiff duly and in a timely fashion registered complaints with the appropriate state and federal agencies and notices of intent to sue and has exhausted his administrative remedies as required by

law. This United States District Court has jurisdiction to proceed to trial in the above entitled matter and to enter judgment against the defendant Western Airlines, Inc. upon a finding of liability and damages. The plaintiff filed his appropriate notice of intent to sue and complaint with the United States Department of Labor on or about December 30, 1975. receipt of that notice of intent to sue was received on or about January 12, 1976, against Western Airlines for discharging him on account of his age on October 17, 1975.

The plaintiff Robert A. Buss filed a complaint and notice of intent to sue against Western Airlines alleging discrimination on account of his age due to his discharge on October 17, 1975 in writing on November 17, 1975 with the Fair Employment Practice Commission, State of California, Agriculture and Services Agency.

4. The plaintiff Roberat A. Vuss was replaced in his position by a younger person, Robert Morrison, born on August 21, 1926, when Mr. Buss was discharged on October 17, 1975.

5. Mr. Buss has at no time been offered reemployment with Western Airlines since he was terminated on October 17, 1975.

6. prior to his discharge from his employment with Western Airlines on October 17, 1975, he had worked for Western Airlines for about 35 years, starting in 1940.

7. At the time of his termination on October 17, 1975, Mr. Buss was Director, Flight Crew Ground Training. He had been in this position for about five years prior to his termination on October 17, 1975.

8. At the time of his discharge on October 17, 1975, the plaintiff Rcbert A. Buss was qualified to be Director, Flight Crew Ground Training.

9. Plainntiff is entitled to recover compensatory damages herein.

Joan Celia (Dollie) Lavine
Attorney at Law
304 S. Broadway, Suite 408
Los Angeles, California 90013
U.S.A.
Telephone (213)627-3421

August 5, 1980

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, Inc., U.S.D.C. (C.D.Cal.) CV-77-124-TJH(Kx) and pre-trial statement

Dear Mr. Giannini:

This is to confirm that you have not delivered to my any information that could be included in a pretrial statement to August 5, 1980 at 4:30 p.m.

This is to confirm that you called my offices at noon-time and cancelled our 3:00 p.m. meeting this afternoon. I talked with you at about 1:45 p.m. and you told me that you expected to be engaged in a deposition for the entire afternoon to at least between 4:00 p.m. and 5:00 p.m. and

could not meet with me. You conveyed nothing to me orally that could be included in a pretrial statement.

This is to confirm that proposed sections I, II and III were delivered to your offices yesterday afternoon and the issues of law and fact in draft form for you to go over as contained in the Plaintiff's Contentions, filed July 28, 1980 were brought to your attention to go over.

Yesterday, you agreed to produce the personnel and payroll files of Mr. Buss's successor, Mr. Morrison. You also agreed to produce the same information for a Mr. McDonald. You advised me yesterday after court that an update of the home locations of persons identified in your discovery is being prepared for me and will be available to me very shortly.

Very truly yours,
/s/
JOAN CELIA LAVINE

Hand-delivered August 5, 1980

Enclosure: Plaintiff's statement of Progress concerning Pretrial Proceedings under Local Rule 9 and F.R.Civ. P., Rule 16, dated August 5, 1980.

EXHIBIT "C"

JOAN CELIA LAVINE

Law Offices
MORRIS LAVINE
617 South Olive Street
Los Angeles, Calif., U.S.A.
90014
Telephone (213)627-3421

August 6, 1980

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, Inc., U.S.D.C. (C.D.Cal.) Case No. CV-77-124-TJH(Kx)

Dear Mr. Giannini:

This is to confirm that I waited for you throughout yesterday, August 5, 1980, in order to work with you on the Buss pre-trial conference statement. Your offices phoned me between 4:30 p.m. and 4:45 p.m. and you and I made an appointment to meet between 5:00 p.m. and 5:15. p.m. yesterday, August 5, 1980.

Neither at our late afternoon meeting yesterday, August 5, 1980, nor previously

did you provide me with anything you indicated should be included in a pretrial statement. You stated that you had not read anything that I had had hand-delivered to your offices, which included a draft for a stipulation as to the admission of facts in this case.

You were entirely unable to discuss with me the papers which I had conveyed to you and you wanted to meet again this morning. I suggested 9:30 a.m. You wanted a later meeting at 10:00 a.m. You told me that you are waiting to go to another court proceeding in some preliminary injunction or TRO hearing and that you had been in deposition all of yesterday afternoon. You told me you had been in a hearing all of Monday afternoon; I assume this was a matter before Magistrate Kronenberg that you had previously mentioned was scheduled.

I am under the impression from your representation to me late yesterday afternoon when I met with you at your offices that you expect to be tied up in another court matter for most of today, August 6, 1980.

As I have indicated to you in the past I have a 24-hour answering service through which I can be located.

EXHIBIT "D"

However, I have remained available for a rather extended period of time. I even had to wait about 15 minutes for you late yesterday when I came over to your offices, at about 5:00 p.m.

If you are too busy to deal with this matter, I would suggest that you have another attorney in your offices meet with me and work on the pretrial statement, if the judge will accept it late.

This is to confirm also that I hand-delivered to you at our meeting a completed pretrial statement that I prepared on behalf of Mr. Buss and filed for him. I have checked my copy of the pretrial conference order which indeed does require that the pretrial statement be filed by the Tuesday before the pretrial conference hearing.

This is also to confirm that you gave me some papers about a Mr. McDonald. However, you told me that they are not complete; that is a slight understatement. They do not include the payroll records and appear to omit most, if not all matters, since about 1977.

I still have not been conveyed any of the payroll or personnel records of Mr. Morrison, Mr. Buss's sucessor and replacement.

I would suggest that you type your portions of any drafts of a pretrial statement and I will type mine so that they can be conbined. You always seem to be late in doing everything, and I do not want to be responsible for your late work.

Sincerely,

JOAN CELIA LAVINE

HAND-DELIVERED

EXHIBIT "E"

(Handwritten)

H.

OTHER MATTERS

1. The parties disagree as to the time estimated for trial. Pl. estimates 15 trial days. Def. estimates six to eight trial days.

2. Def. contemplates law & motion proceedings regarding pl's witnesses listed for trial, & in particular, expert witnesses.

3. Pl. contemplates further discovery on the issue of damages, & if a writ is granted, or a change of ruling on discovery, will wish to pursue (? illegible), in addition pl. wishes to continue depo of R V Sorenson & may wish to depose Bruce Wallace.

4. Def. will seek further responses to its interrogatories to pl., & also conduct discovery at pl's experts & the basis for first opinions. Also def. wants copies of all trial exhibits and an opportunity

to depose witnesses not identified in pl's interrogatory responses.

5. Def. contests pl's right to a jury trial on all of the issues listed herein, & relies upon Lorillard v. Pons, 434 U.S. 515 (1978) to guide this Court.

This is the
draft referr
to in Ex. H

EXHIBIT "F"

Law Offices
DARLING,HALL, RAE & GUTE
400 Pacific Mutual Building
823 West Sixth Street
Los Angeles, California 90014

Area Code 213
627-8104

August 6, 1980

Time: 3:30 P.M.

Joan Celia Lavine
Attorney At Law
304 South Broadway
Suite 408
Los Angeles, CA 90013

RE: Robert A. Buss v. Western Air Lines, Inc. U.S.D.C. No. CV 80-77-124-TJH(Kx)

Dear Ms. Lavine:

Pursuant to your request and Mr. Giannini's instructions, enclosed please find copies of the following documents:

1. Objections to Plaintiff's Exhibits list; and

2. Defendant's Contentions of Fact.

Very truly yours,

DARLING, HALL, RAE & GUTE
/s/
P. V. Jones
Secretary to PAUL L. GIANNINI
Enclosures

EXHIBIT "G"

DEFENDANT'S CONTENTIONS OF FACT

1. Defendant Western Air Lines, Inc. ("Western") is a Delaware corporation, authorized to do business and doing business in the County of Los Angeles, State of California, at all times herein mentioned. Defendant is an employer within the meaning of 29 U.S.C. @630(b). Western is a commercial airline carrier certificated by the Civil Aeronautics Board.

2. Plaintiff was first employed by defendant on February 15, 1940, and became enrolled in defendant's Retirement Income Plan ("Retirement Plan") on or about July 1, 1952, for non-contract employees.

3. For purposes of computing retirement benefits and seniority, the above dates were used by defendant.

4. The last day worked by plaintiff was October 17, 1975. Plaintiff was told in or about September of 1975 that he was

bein relieved of his duties, but that he would receive ten weeks salary until January 23, 1976, as well as accrued vacation pay.

5. Plaintiff applied for "early retirement" under defendant's Retirement Income Plan on January 26, 1976.

6. Plaintiff received as part of that retirement income plan, a lump sum payment in the amount of $17,469.39.

7. Plaintiff receives under the Retirement Income Plan of defendant the monthly payment of $921.67 per month from February 1, 1976, and each month thereafter. Plaintiff has received payments in that amount since February 1, 1976.

8. Plaintiff was Director of Ground Trainin - Flight from 1971 to June 25, 1974, when his title was changed to "Director-Flight Crew Ground Training."

9. Plaintiff was "Director-Flight Crew Ground Training" from June 25, 1974 to his furlough on October 17, 1975.

10. Prior to 1971, plaintiff was "Assistant to Vice-President, Flight Operations", who was H. W. Coward.

11. Plaintiff filed a notice of intent to sue with the Department of Labor on or about January 12, 1976.

12. Plaintiff's annual salary at the time of his retirement was approximately $30,004.00.

13. Plaintiff was informed he was to be placed on furlough as Director-Flight Crew Ground Training in or about September of 1975. Plaintiff was informed at that time that his separation from Western was permanent.

14. Plaintiff was counselled by A. B. Favero, Senior Vice President, Operations, and Robert V. Johnson, Vice President

Flight Operations, on the utilization of his time and that of the employees under his supervision on many occasions from April 1974 until he was furloughed in 1975.

15. Plaintiff refused to qualify himself to do direct training in the flight school as requested by both Messrs. Favero and Johnson.

16. Mr. Richard McDonald, a manager under Mr. Buss was also instructed to qualify himself to train in the flight school program, and did so qualify, as did other employees.

17. Plaintiff refused, in a memorandum dated June 27, 1974, to furnish A. B. Favero either with "instructor hours available" or "instructor hours utilized," as he had been requested to do. This information was necessary for management to make appropriate personnel decision.

18. Plaintiff was counselled by Robert V. Johnson to furnish the information to Mr. Favero which was requested by him in a timely fashion, but failed and refused to do so.

19. Plaintiff on more than one occasion complained to Robert V. Johnson,his superior, about responding to requests for information regarding the utilization of personnel in his department.

20. Messrs. Favero and Johnson made it clear that they believed plaintiff's department to be under-tuilizing its personnel, on several occasions. Nevertheless, plaintiff did not make any efforts to reduce the number of employees under his supervision until ordered to do so by his superiors.

21. During the period April 1974-1975, some of the personnel under plaintiff's supervision were placed on furlough or

transferred to other divisions or departments for reasons of economy.

22. Due to a shortage of fuel, and the Arab oil embargo, flight operations for defendant were curtailed during the 1974-75 period. Many of defendant's employees in all departments of the company had to be placed on furlough or terminated, for reasons of economy.

23. At the time of plaintiff's separation from Western, the Company had a policy of furloughing management employees on the basis of overall performance evaluation in which the least effective (lowest performance ratings) management employees were those furloughed first. Plaintiff's overall evaluation by his superiors was that his performance as a director of the flight crew training school was grossly inefficient and ineffective.

24. The employee who replaced plaintiff as director of the flight crew training school was able to manage and operate the school and its employee instructors with one-third fewer employees than those supervised by plaintiff, while still training substantially the same number of pilots as previously.

25. The primary responsibilities and duties of the Director-Flight Crew Ground Training was to be responsible to the Vice President-Flight Operations, for all (Federal Aviation Administration) required recurrent, initial and transitional ground school and flight simulator training of pilot personnel.

26. Western's Retirement Income Plan for non-bargaining employees ("Retirement Plan") was and is a bona fide retirement or pension plan, and was not instituted as a subterfuge to evade the purposes of the

ADEA.

27. The Retirement Plan has uniformly been applied so that retirement at the normal retirement date has always been the case. The Retirement Plan provided in October of 1975 for a normal retirement date of age 65.

28. Plaintiff's employment would have ceased on February 1, 1978, had he not been terminated in October of 1975, as the provisions of the Retirement Plan would have forced his retirement on that date.

29. Plaintiff voluntarily enrolled in the Retirement Plan and continued making contributions thereto while employed at Western.

ROBERT A BUSS V. WESTERN AIRLINES, INC.,
Case No. CV-77-142-TJH

EXHIBIT LIST OF PLAINTIFF

Description	Date Marked	Date Admitted	Objections
1. Letter stating Mr. Buss would retire as of October 17, 1975, signed by Robert V. Johnson (no date)			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery
2. Letter praising Mr. Buss's performance, signed by Anton Favero, senior vice president of Western Airlines, dated October 21, 1975			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery
3. Files and records of the U.S. Department of Labor concerning age discrimination complaint of Mr. Buss and investigation of same, finding Mr. Buss had been discriminated against on account of his age by Western Airlines			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
4. Files and records and documents of the California Department of Employment Development Department concerning October 17, 1975 discharge and comp.			Hearsay, relevance Rules 403, 703, 704, 801, not produced in discovery
5. Payroll records of William Morrison			Hearsay, relevance Rules 403, 703, 704, 801, not produced in discovery.
6. Payroll sheet prepared by Pauline Davis showing Mr. Morrison's gross salary and per diem starting in 1974 (undated)			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
7. General administrative manual of Western Airlines for 1973			Hearsay, relevance, Rules 403, 703, 704, 801, not provided in discovery.
8. General administrative manual of Western Airlines for 1974.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.
9. General administrative manual of Western Airlines for 1975.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.

Description	Date Marked	Date Admitted	Objections
10. General administrative manual of Western Airlines for 1976.			Hearsay, relevance, Rules 403, 703, 704, 801, not produced in discovery.
11. General administrative manual of Western Airlines for 1977.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
12. General administrative manual of Western Airlines for 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
13. General administrative manual of Western Airlines for 1979.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
14. General administrative manual of Western Airlines for 1980.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
15. Confidential memorandum concerning furlough policies of Western Airlines, dated 8/24/74.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
16. A copy of a note dated September 15, 1975, initialed purportedly by Anton Favero.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
17. The original note dated September 15, 1975, initialed purportedly by Anton Favero.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
18. The original and copies of note, dated September 16, 1975 initialed by Anton Favero and sent to Robert V. Johnson telling Mr. Johnson to "retire" Mr. Buss.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
19. The personnel files of Robert A. Buss of Western Airlines.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.
20. The yearly, annual shareholder's reports published by Western Airlines from the year 1973 to the present time of the trial.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
21. The quarterly statements prepared by Western Airlines for its shareholders and published.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
22. The depositions of Robert A. Buss taken herein and the attachments thereto.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
23. The depositions of Arthur Kelly, taken August 17, 1978 herein.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
24. Checks disbursing funds from annuity and pension plan, starting in May, 1976, by Prudential Life Insurance Company to Robert A. Buss.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
25. Pension and retirement plan to which William Morrision has belonged between November 10, 1975 and date of trial.			Hearsay relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
26. Pension plan folders and statements as to non-bargaining employees of Western Airlines, which applies to Robert A. Buss			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
27. The deposition of Robert J. Schnitzer, taken August 14, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
28. The deposition of Robert V. Johnson taken May 31, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
29. The deposition of of Anton Ben Favero, taken June 1, 1978.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
30. Western Airlines articles of incorporation or corporate charter.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
31. Western Airlines by-laws			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objections
32. Western Airlines corporate minutes, executive committee, shareholder and board of directors from 1970 to the present time.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
33. The files and records of Buss v. Western Airlines, U.S.D.C. (C.D.Cal.) CV-77-124			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
34. The files and records of Buss v. U.S.D.C. (C.D.CAL.) U.S.C.A. (9th Cir.) 78-3174			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
35. Files and records of Western Airlines v. Union Oil Co., U.S.D.C. (C.D.Cal.)CV-75-1351-JWC and particularly the complaint and interrogatories and responses to same.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
36. Employee's Annual Statement concerning Retirement Income Plan for years 1971 through present time.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
37. Document production, pursuant to response filed herein on August 29, 1977.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
38. Computor printouts of Robert'Buss's pension plan information from December 12, 1975 print-out			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
39. Prudential Notice to Recipients of Taxable Lump Sum Distributions, etc.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
40. Letter dated February 1, 1976 from Prudential to Robert A. Buss concerning annuity.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
41. Prudential letter, dated May 5, 1976, to Robert A. Buss showing return of employee contributions ($17,469.39)			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
42, Los Angeles Magazine, September, 1977 article "Down to Basics", by Tom Link, starting page 110.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
43. SEC Westen Airlines filing, Form S-7, August 10, 1977.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
44. Quarterly Shareholder statements since 1973 of Western Airlines.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
45. January 28, 1977 article, Valley News, "Western will buy 7 jetliners.			Hearsay, relevance, Rules 403 703, 704, 801 not produced in discovery.
46. Forbes, October 15, 1976, article "Alone in the Cockpit", page 63.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
47. Letter, dated January 23, 1976, to Robert A. Buss from Bruce Wallace.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
48. Summary Annual Report for the Plan Year August 1, 1975 to July 31, 1976 of Westenr Airlines Group Insurance plan, etc.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery
49. Copies of pilot's license of Robert A. Buss.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

Discovery	Date Marked	Date Admitted	Objections
50. Letter of May 25, 1973, re New Minimum Retirement Income and 1972 Annual Statement			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
51. Letter of Brig Whittaker, undated			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
52. Interoffice Correspondence to Robert A. Buss dated 8-30-74 re retirement income plan from Pat Ryan			Hearsay, relevance, Rules 403, 703,704, 801 not produced in discovery
53. Letter of September 3, 1974 re Annual Statement for Management, Administrative and Technical Employees from Dan Zaich.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
54. Letter of January 27, 1975 to all management and administrative & Technical employees from Dominic Renda.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
55. Letter of May 25, 1976 to participants in Western Airlines Retirement Income Plans, etc.			Hearsay, relevance, Rules 403 703, 704, 801 not produced in discovery.

Description	Date Marked	Date Admitted	Objection
56. Receipt, dated May 16, 1978 from Paul L. Giannini in regards to the items number 50 through 55.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
57. May, 1980 edition of newspaper, Flight Times, published by Western Airlines.			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.
58. March, 1976 Flight Times			Hearsay, relevance, Rules 403, 703, 704, 801 not produced in discovery.

LAW OFFICES
DARLING, HALL, RAE & GUTE
400 PACIFIC MUTUAL BUILDING
523 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014

Joan Celia Lavine
Attorney At Law
304 South Broadway
Suite 408
Los Angeles, CA 90013

TO BE PICKED UP BY MS. LAVINE'S OFFICE

TODAY

JOAN CELIA LAVINE

Law Offices
MORRIS LAVINE
304 S. Broadway, #40B
Los Angeles, Calif., U.S.A.
90013
Telephone (213) 627-3421

August 8, 1980

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, Inc., U.S.D.C. (C.D.Cal.) Case No. CV-77-124-TJH(Kx)

Dear Mr. Giannini:

This is to confirm that I met with you from about 10:00 a.m. to 11:30 a.m. on August 6, 1980 at your offices at 523 West Sixth Street, Suite 400, Los Angeles, California to work on the preparation of a pretrial statement in Buss v. Western Airlines. For the first time, you conveyed to me a writing indicating something that you wanted included, which started with "IX . . . Other Matters" and which was written out by you while I was with you

at that time. You also indicated for the first time to me what you approved of and what you disapproved of in the first three sections I had prepared and which had been hand-delivered to your offices on August 4, 1980. You told me that you would re-write your issues of fact, and you asked me to put in proper form your contentions of law. This was the first time you told me what you wanted included as your contentions of law and fact, which remain to be litigated or any other matter in the pretrial statement. You had no other objections.

At the above meeting you did not state what your objections to exhibits were; you advised me that you had not prepared these yet.

At about 3:30 p.m. on August 6, 1980 my offices received a phone call that your contentions of fact and your objections

1

to my exhibits could be picked up at your offices. You did not deliver same to my offices, but waited for me to send someone at my expense to your offices for them, at about 4:00 p.m. that day.

At between 11:30 a.m. and noon, August 7, 1980 I phoned your offices and left word that you could come over and go through the completed draft of the pretrial statement I had prepared, based on your objections at on August 6, 1980 meeting and what you had conveyed to me in writing. I had tried to reach you by phone on at

EXHIBIT "H"

least four (4) occasions, August 7, 1980 during the morning, but was repeatedly told that you were on another line and would not take the phone.

From the time I left word that you could come over to my offices to pick up and go over the final draft of our pretrial statement, I waited for you in my offices. You did not return my calls. Rather, at about 12:45 p.m. a messenger came to my door and stated that he was from your offices and wanted to pick up some papers that were to be ready for him.

I continued to await your arrival at my offices, but at close to 3:00 p.m., August 7, 1980, instead of coming over to go over the document with me, you phoned me and stated that the pretrial statement was objectionable to you and that you would not execute it. This was although when I asked you if you had read the document sent over to you, you indicated and admitted that you had read only "portions of it", not the entire document. The "Closing Paragraph" had been contained in the first

pretrial statement that we were working from on August 6, 1980, and you did not at that time state any objection to it whatsoever; it is that section which I gather that you object to now.

I wish to advise you that I am satisfied with the pretrial statement which your courier picked up and do not wish to modify it to preclude or waive the rights of my clients to have full and fair access to the courts. I therefore have conveyed to the court the original of the draft conveyed to you yesterday, for the Court's execution in its present form.

As I have indicated to you on many occasions in the past, I am always willing to discuss any matter in the Buss case. However, I have found it very difficult to work with you since you seem to have

paid far more attention to other matters this week than the Buss case.

Very truly yours,

/s/

JOAN CELIA LAVINE

Hand-delivered August 8, 1980

EXHIBIT "I"

JOAN CELIA LAVINE

Law Offices
MORRIS LAVINE
304 S. Broadway, Suite 408
Los Angeles, California, U.S.A.
90014
Telephone (213) 627-3241

Mr. Paul L. Giannini
Darling, Hall, Rae and Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines, U.S.D.C. (C.D.Cal.) Case No. CV-77-124-TJH

Dear Mr. Giannini:

This is to confirm that you handed me on August 6, 1980 at our morning meeting some documents which appear to be portions of the personnel file of William Morrison, who replaced Mr. Buss has Director, Flight Crew Ground Training.

I asked you for the payroll records of Mr. Morrison which you told me were computerized. No copies of ledgers or computerized data on either Mr. Morrison or a Mr. McDonald have been conveyed to me to

date for the undertaking of damages computations on Mr. Buss's behalf, although you have promised me this information. I await same, including fringe benefits data.

Sincerely,

/s/

JOAN CELIA LAVINE

Hand-delivered August 8, 1980

EXHIBIT "J"

DARLING, HALL RAE & GUTE

400 Pacific Mutual Building

523 West Sixth Street

Los Angeles, California 90014

627-8104

Attorneys for Defendant, Western Air Lines, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff, v. WESTERN AIR LINES, INC., Defendant.	NO. CV-77-124-TJH (Kx) AFFIDAVIT OF PAUL L. GIANNINI

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

1. I am an attorney at law, licensed to practice before the Courts of the State of California and an associate in the law firm of Darling, Hall, Rae & Gute, attorneys

of record for defendant, Western Air Lines, Inc., in the above-entitled action.

2. On or about Monday, August 4, 1980, I met with Ms. Joan Lavine and discussed the proposed Pre-Trial Conference Order. This meeting lasted approximately one (1) hour. It was agreed at that time that Ms. Lavine would furnish me with a proposed Order for my review.

3. On Tuesday, August 5, 1980, I telephoned Ms. Lavine and told her it would not be possible to meet that day because I was engaged in deposition in the case of Equal Employment Opportunity Commission v. Western Air Lines, Inc. We arranged a meeting for the following day.

4. On Wednesday, August 6, 1980, Ms. Lavine, her law clerk and myself met for approximately one and one-half (1-1/2) hours in my office and again discussed the Pre-Trial Conference Order. At this

time, I advised Ms. Lavine of my objections to plaintiff's exhibits, and we also agreed upon certain admitted facts. I then had defendant's Contentions of Fact and Law that remained in dispute retyped. My office then contacted Ms. Lavine at approximately 3:37 p.m. that day and told her the retyped Contentions were ready for her review.

5. Sometime during the morning of Thursday, August 7, 1980, this office received the proposed Pre-Trial Statement that is attached as Exhibit "A". Upon my review of that document, I noticed immediately on Page 37 that Ms. Lavine was going to sign the Stipulation "with reservations". I also noted numerous references in the Stipulation of plaintiff's right to augment, revise, or alter the Pre-Trial Statement; plaintiff also apparently reserved the right to add further exhibits and witnesses.

6. I immediately called Ms. Lavine by telephone and stated that I would not stipulate to the proposed Order in this form. She indicated that she would reconsider her proposed signature "with reservations" and would call me back. This was on Thursday, August 7, 1980.

7. Since that time, I have received only a written communication from Ms. Lavine dated Friday, August 8, 1980, stating that she intends to have the Court sign the Order over my objection.

If called upon to testify to the foregoing statements of fact as true and correct, I would be competent to so testify and certify under penalty of perjury that they are true and correct, except as to those matters based upon information and belief, and as to those matters I believe them to be true.

Executed on (August 8, 1980, at Los Angeles, California.

/s/
PAUL L. GIANNINI

Subscribed and sworn to before me this (8th) day of August, 1980.

(SEAL)

/s/ (Esperanza Ramos Franco)
Notary Public in and for the
State of California

LAW OFFICES
ROBINSON, ROBINSON & SPENCER

Los Angeles Office
888 West Sixth Street, Suite 300
Los Angeles, California 90017
Telephone (213) 485-1766

August 11, 1980

Paul L. Giannini, Esq.
Darling, Hall, Rae & Gute
523 West Sixth Street, Suite 400
Los Angeles, California 90014

Re: Buss v. Western Airlines

Dear Mr. Giannini:

This will confirm our conversation of this date in which we both agreed to attempt to complete the discovery process as much as possible by informal requests for information and informal responses.

You have indicated that you will send me a letter indicating the names of the persons you wish to depose prior to trial, and we will provide you with a similar letter shortly.

You have already indicated that you will give us the full names and addresses of prospective witnesses whom we may or may not wish to depose or to interview.

Thanking you for your cooperation, I am

Yours very truly,

/s/

Mark P. Robinson

MPR/jh

cc: Joan C. Lavine

EXHIBIT "L"

EXHIBIT A

WITNESS LIST OF DEFENDANT
WESTERN AIR LINES, INC.

WITNESS	TELEPHONE NO.
DOMINIC P. RENDA, President Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345
ANTON B. FAVERO, Senior Vice President, Operations Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345
ROBERT V. Johnson, Vice President, Flight Operations (Retired) Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345
DONALD W. VENA, Director, Personnel Administration Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345
BRUCE WALLACE, Manager Pension Benefits Western Air Lines, Inc. 606 Avion Drive Los Angeles, California 90009	646-2345
ROBERT BUSS (Plaintiff)	

WITNESS	TELEPHONE NO.
CARL NESBITT, Director of Profit Planning Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345
WILLIAM MORRISON, former Director, Flight Operations Training Western Air Lines, Inc. 6060 Avion Drive Los Angeles, California 90009	646-2345

EXHIBIT "M"

APPENDIX T

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

(ORIGINAL)

CV 77-124-TJH Date 10/20/80

Robert A. Buss vs Western Airlines

DOCKET ENTRY

(10/22/80) Taxed Costs in sum of $_____, against (deft.) (DENIED)

(/22/80) Taxed costs in sum of $(265.10), against (PLTF.)

ENTERED
OCT 23 1980

CLERK,U.S.DISTRICT
COURT, CENTRAL DIS-
TRICT OF CALIFORNIA

PRESENT:

HON. TERRY J. HATTER, JR., JUDGE

Florence Kato
Deputy Clerk

Patricia Ferrier
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Joan Celia Lavine

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS: HRG re Pltf's Motion to Recuse Judge Hatter
re Pltf's Motion to Reconsider Dismissal of Action

The Court having considered the matters without oral arguments,

IT IS ORDERED that plaintiff's motion to recuse this Court and the motion to reconsider dismissal of the action are denied.

cc: Counsel of record.

Initials of Deputy Clerk _____

OCT 23 1980

APPENDIX U

FILED
JUL 24 1984
CLERK, U.S. DISTICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT A. BUSS, Plaintiff-Appellant v. WESTERN AIRLINES, INC., Defendant-Appellee	) CV 77-124-TJH)) 9th Cir.: 80-5818)) ORDER

This Court hereby issues the following clarification in regard to the above captioned matter:

This Court did not receive in evidence a tape recording of a June 18, 1980 pretrial conference meeting.

Further, the above mentioned tape was not taken into consideration in, and was unrelated to, the Court's decision to dismiss the case.

DATED: (7/24/84

/s/ Terry J. Hatter,Jr.
TERRY J. HATTER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX V

FILED
JUL 26 1984
PHILLIP B.
WINBERRY
CLERK, U.S.
COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OBERT A. BUSS,	)
	) No. 80-5818
Plaintiff-Appellant,	)
	) D.C. No.
v.	) CV-124-TJH
	)
ESTERN AIRLINES, INC., a orporation,	) O P I N I O N
	)
Defendant-Appellee.	)

Appeal fromthe United States District ourt for the Central District of California erry J.Hatter, U.S. District Judge, Presiding
Argued and submited July 5, 1984

EFORE: GOODWIN and FARRIS, Circuit Judges, and ORRICK*, District Judge

ER CURIAM

Robert A. Buss ended nearly 35 years

f employment with Western Airlines on

Honorable William H. Orrick, Jr., United tates District Judge for the Northern Dis- rict of California, sitting by designation.

October 17, 1975 under circumstances which led him, in January, 1977, to file an action for damages for violating 29 U.S.C. § 621 et seq. (The Age Discrimination in Employment Act). In September, 1980, the district court dismissed the complaint because of plaintiff's failure to comply with court orders and failure to comply with local rules in a number of respects that delayed the preparation of the case for trial. Buss appeals, contending that the dismissal of the complaint without prejudice was an abuse of discretion in view of the running of the statute of limitations against his cause of action.

The voluminous file in this case reveals that a vast amount of lawyer time on both sides was expended in largely unnecessary paper shuffling as the parties battled over discovery and preliminary

matters. Plaintiff's counsel assigned most of the difficulty to her heavy caseload of other litigation and to the novelty of the issues in this case. The trial court record reveals, however, that a good deal of the difficulty was caused by intransigence and total unconcern for the local rules of court.

It is not the purpose of this decision to assess fault. The trial judge, however, was not at fault. A judge with a caseload to manage must depend upon counsel meeting each other and the court halfway in moving a case toward trial. Time and again, over a period of more than three years, plaintiff's counsel refused to tender to the defense a realistic draft of language to be included in the pretrial order. Counsel was warned by the court upon several occasions that further delay and refusal to

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cooperate would result in the case being dismissed. The case is very similar to Von Poppenheim v. Portland Boxing & Wrestling Commission, 442 F.2d 1047 (9th Cir. 1971), cert. denied, 404 U.S. 1039 (1972).

The only point that keeps this appeal from being wholly frivolous is that the trial court dismissed the complaint at the end of a status conference instead of waiting another month until the final deadline for the pretrial order. Plaintiff understandably attempts to make the most of this event. However, counsel failed to show, even now, that she was making a good faith effort to tender a pretrial order on time. From the record in its entire context, it is clear that the district judge did not abuse his discretion. Indeed, the handling of the particular case by the district judge reveals far more patience

and forebearance than plaintiff's performance would have encountered in a number of other departments. The dismissal at the end of the status conference was entirely reasonable in light of the inability and unwillingness of counsel to offer any hope of moving affirmatively toward the filing of a pretrial order in the foreseeable future.

Affirmed.

APPENDIX W

F I L E D
SEPT 13 1984
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT A. BUSS, Plaintiff-Appellant,	)	No. 80-5818
v.	)	ORDER
WESTERN AIRLINES, INC., a corporation, Defendant-Appellee.	)	

Before: GOODWIN and FARRIS, Circuit Judges, and ORRICK* District Judge

The appellant's petition for rehearing is denied.

*The Honorable William H. Orrick, Jr., United States District Judge for the Northern District of California, sitting by designation.

APPENDIX X

Article III of the United States Constitution provides:

"Article III, U.S. Constitution

Section 2, Clause 1. Subjects of jurisdiction.

"The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, --to all Cases affecting Ambassadors, other public Ministers and Consuls; --to all Cases of admiralty and maritime jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between citizens of different States;--between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

APPENDIX Y

The Fifth Amendment, United States Constitution provides in relevant part, to-wit:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

APPENDIX Z

The Seventh Amendment, United States Constitution provides:

"Trial by jury in civil cases.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

APPENDIX AA

Federal Rules of Civil Procedure, Rule 16 provides:

"Rule 16. Pre-Trial Procedure; Formulating Issues

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions."

APPENDIX BB

Federal Rules of Civil Procedure, Rule 41(b) reads in pertinent part:

"Rule 41. Dismissal of Actions

. . .

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him."

APPENDIX CC

Federal Rules of Civil Procedure, Rule 83 provides:

"Rule 83. Rules by District Courts

Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules."

APPENDIX DD

U.S. District Court for Central District of California, Local Civil Rule 9, in effect during 1980, prior to its 1983 amendment provides in pertinent part:

"Rule 9

. . .

(g) Pre-Trial Conference Order

Not later than 5:00 p.m., on the Wednesday prior to the pre-trial conference, plaintiff shall serve and lodge with the clerk a proposed Pre-Trial Conference Order, approved as to form and substance by the attorneys for all parties appearing in the case, and in form substantially as follows:"

APPENDIX EE

U.S. District Court for Central District of California, Local Civil Rule 9, put into effect during 1983, amending Local Rule 9 so as to distribute equal responsibility for preparation of a proposed pretrial order prvides in pertinent part:

". . .

> 9.8 PRE-TRIAL CONFERENCE ORDER A Pre-Trial Conference Order shall be prepared by plaintiff's counsel and signed by all counsel. It is the duty of all counsel to cooperate with plaintiff's counsel in the preparation and submission of the Pre-Trial Conference Order as required by this rule. Failure of counsel to comply shall subject counsel to the sanctions provided by the provisions of Local Rule 27 and 28 U.S.C.section 1927.

APPENDIX FF

U.S. District Court for Central District of California, current Local Rule 27.2 which was put into effect after the pendency of this matter, reads as follows:

". . .

27.2 PENALTY - FAILURE TO APPEAR OR PREPARE Failure of counsel for any party to take any of the following steps may be deemed an abandonment or failure to prosecute or defend diligently by the defaulting party:

(a) Complete the necessary preparation for pre-trial;

(b) Appear at pre-trial conference;

(c) Be prepared for trial on the date set; or

(d) Appear at any hearing where service of notice of the hearing has been given or waived.

Judgment may be entered against the defaulting party either with respect to a specific issue or on the entire case.

. . .

83.3"